

Nos. 20-35752
20-35881

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEBRA BLAKE, et al.,

Plaintiffs-Appellees,

v.

CITY OF GRANTS PASS,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Oregon, Medford (Hon. Mark D. Clarke)
Dist. Ct. No. 1:18-cv-01823-CL

BRIEF OF *AMICUS CURIAE*
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DISCLOSURE STATEMENTS

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(A), each amicus is a nonprofit organization with no parent corporation and in which no person or entity owns stock.

STATEMENT REGARDING CONSENT TO FILE

Pursuant to Rule 29(a)(2), counsel for amicus curiae represents that no parties objected to the filing of this brief.

STATEMENT REGARDING PREPARATION OF BRIEF

No counsel for any party authored this brief in whole or in part, and no party or person other than amici and counsel for amici contributed any money to prepare or submit this brief.

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INTRODUCTION

The University of Miami School of Law Human Rights Clinic (“Clinic”), National Homelessness Law Center (“Law Center”), and Leilani Farha respectfully submit this brief as amicus curiae in support of Plaintiffs-Appellees. They bring expertise in human right standards with respect to homelessness and can provide the Court with relevant analysis.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Founded in 2010, the Clinic works for the promotion of social and economic justice globally and domestically, with a focus on homelessness.¹ Past Clinic projects include an amicus brief filed with the African Court on Human and Peoples’ Rights on the gender impacts of vagrancy laws, which contributed to a decision finding vagrancy laws incompatible with human rights, as well as a submission on Housing and Homelessness in Miami-Dade County, Florida to the United Nations (UN) Human Rights Council.

¹ See <https://www.law.miami.edu/academics/clinics/human-rights-clinic>.

Founded more than thirty years ago, the Law Center² is a nonprofit organization based in Washington, D.C. It is the only national legal organization with the mission to prevent and end homelessness. The Law Center has published numerous reports analyzing issues related to homelessness in the United States (“U.S.”).³ The Law Center published *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*,⁴ which analyzes 187 city codes that effectively make it a crime for persons experiencing homelessness to engage in necessary, life-sustaining activities in public. The Law Center has also conducted extensive international human rights advocacy on homelessness in the U.S.

Leilani Farha is the former UN Special Rapporteur on the right to adequate housing (2014-2020) and Global Director of The Shift. As Special Rapporteur, Ms. Farha helped develop global human rights standards on the right to housing, including through her reports on homelessness, the financialization of housing, informal settlements, rights-based housing strategies, and the first UN Guidelines on implementing the right to housing. The Shift, launched in 2020 with the UN Office

² Formerly known as National Law Center on Homelessness & Poverty.

³ See National Law Center reports at <https://nlchp.org/publications>.

⁴ Nat’l Homelessness L. Ctr., *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

of the High Commissioner for Human Rights and United Cities and Local Governments, works with multi-level stakeholders around the world including city governments in North America and Europe to secure the right to adequate housing.⁵

⁵ See <https://www.make-the-shift.org/>.

ARGUMENT

I. PUNISHING HOMELESSNESS VIOLATES FUNDAMENTAL HUMAN RIGHTS.

A. International Human Rights Standards Are Evidence of an Evolving Standard of Decency Crucial to Interpreting Violations of “Cruel and Unusual Punishment” under the Eighth Amendment.

The right to be free from “cruel, inhuman, and degrading treatment or punishment” (“CIDT”) is set out in core international instruments. These include the Universal Declaration of Human Rights (“UDHR”);⁶ International Covenant on Civil and Political Rights (“ICCPR”)⁷ and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),⁸ treaties ratified by the U.S.; and Convention on the Rights of the Child (“CRC”).⁹

⁶ Universal Declaration of Human Rights, art. 7, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]. The UDHR holds normative force as the foundational document of the international human rights system, with parts of it binding customary law. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMP. L. 287, 289 (1996). The U.S. played a key role in the UDHR’s drafting, and it has “perhaps been referred to more frequently by U.S. courts than by courts in any other jurisdiction.” *Id.* at 304-05 (1996).

⁷ International Covenant on Civil and Political Rights art. 16(1), *ratified* Jun. 8, 1992, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16(1), *ratified* Oct. 21, 1994, 1465 UNTS 85, 113 [hereinafter CAT].

⁹ Convention on the Rights of the Child art. 37, *signed* Feb. 16, 1995, 1577 U.N.T.S. 3 [hereinafter CRC].

CIDT is an expansive concept that applies not only to “acts that cause physical pain but also to acts that cause mental suffering to the victim.”¹⁰ This definition encompasses punishing individuals for engaging in life-sustaining activities.¹¹

The Supreme Court has referred to these CIDT provisions in determining the meaning of “cruel and unusual punishment” within the Eighth Amendment. In *Roper v. Simmons*, the Court consulted international standards when applying the “evolving standards of decency” test, which looks to “the progress of a maturing society” to determine which punishments are so disproportionate as to be ‘cruel and unusual.’”¹² The Court noted that the “overwhelming weight of international opinion” reflected in the CRC’s ban provided “significant confirmation” for its determination that the death penalty for juvenile offenders is cruel and unusual punishment.¹³

¹⁰ Hum. Rts. Comm., *CCPR General Comment No. 20: Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992).

¹¹ Hum. Rts. Comm., *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) (“The Committee notes that such criminalization [of homelessness] raises concerns of discrimination and cruel, inhuman or degrading treatment.”).

¹² *Roper v. Simmons*, 543 U.S. 551, 551 (2005) (citing *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958)).

¹³ *Id.* at 554.

The Court in *Graham v. Florida* again found the consensus of the international community persuasive in determining whether the Eighth Amendment’s prohibition of “cruel and unusual punishment” applies to life without parole sentences for juvenile offenders who had not committed homicide.¹⁴ In finding that this punishment violates the Eighth Amendment, the Court noted that the U.S. is “the only Nation that imposes this type of sentence,” applying the “evolving standards of decency” test.¹⁵ The Court looked to the practices of other countries and international agreements as evidence “that a particular sentencing practice is inconsistent with basic principles of decency” within the meaning of the Eighth Amendment.¹⁶

B. Human Rights Bodies Articulate a Clear and Consistent Standard that Punishing Homelessness Constitutes CIDT.

Punishing people experiencing homelessness simply for engaging in life-sustaining conduct constitutes CIDT under international law, as repeatedly articulated by various human rights bodies. During its review of the U.S. for its compliance with ICCPR, the HRC concluded that the U.S.’s “criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in

¹⁴ *Graham v. Florida*, 560 U.S. 48, 52–53 (2010).

¹⁵ *Id.* at 81.

¹⁶ *Id.* at 82.

particular areas. . . raises concerns of . . . cruel, inhuman or degrading treatment.”¹⁷

The HRC recommended that the U.S. “[a]bolish the laws and policies criminalizing homelessness at state and local levels,” which includes fining people merely for engaging in life-sustaining conduct.¹⁸

Various U.N. Special Rapporteurs have likewise condemned punishing homelessness as CIDT.¹⁹ During her August 2011 visit to the U.S., the Special Rapporteur on extreme poverty and human rights, remarked, “Where there is insufficient public infrastructure and services to provide families with alternative places to perform such behaviours, persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink. These measures can thus have serious adverse physical and psychological effects on persons living in

¹⁷ HRC Concluding Observations: United States, *supra* note 11, ¶19.

¹⁸ *Id.*; see also Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, CERD/C/USA/CO/7-9, ¶ 12 (2014) (calling upon the U.S. to “[a]bolish laws and policies making homelessness a crime”; “intensify efforts to find solutions for the homeless, in accordance with human rights standards”; and “[o]ffer incentives to decriminalize homelessness”).

¹⁹ *E.g.*, Hum. Rts. Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina De Albuquerque, *Mission to the United States of America*, ¶ 58, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011) (“Because evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could . . . amount to cruel, inhumane or degrading treatment.”).

poverty. . . even amounting to cruel, inhuman or degrading treatment.”²⁰ In 2017, the subsequent Special Rapporteur on extreme poverty and human rights highlighted the cruelty of regimes that fine people experiencing homelessness for existing in public: “Ever more demanding and intrusive regulations lead to infraction notices for the homeless, which rapidly turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing.”²¹ In 2019, the Special Rapporteur on adequate housing further noted that the very existence of homelessness itself is “a profound assault on dignity, social inclusion and the right to life. It is a prima facie violation of the right to... freedom from cruel, degrading and inhuman treatment.”²² She thus recommended that “any and all laws or measures that criminalize, impose fines on or restrict homeless people or behavior associated

²⁰ Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Extreme Poverty and Human Rights*, ¶ 36, U.N. Doc. A/66/265 (Aug. 4, 2011).

²¹ Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶¶ 45, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

²² Hum. Rts. Council, Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, *Guidelines for the Implementation of the Right to Adequate Housing*, ¶ 30, U.N. Doc. A/HRC/43/43 (Dec. 26, 2019).

with being homeless, such as sleeping or eating in public spaces, must be immediately repealed.”²³

Universal Periodic Reviews (“UPR”) of the U.S.’s compliance with human rights standards, a peer review process under the U.N. Human Rights Council, have further pointed to the need to address the criminalization of homelessness and poverty. In 2015, Egypt recommended that the U.S. “[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments.”²⁴ While the U.S. did not concede that current laws violate international standards, it declared that it is “committed to helping communities pursue alternatives to criminalizing homelessness.”²⁵ In the most recent review of the U.S. in 2020, Malta recommended that the U.S. refrain from using “policing as a response

²³ *Id.* at ¶ 91(e).

²⁴ HRC Recommendations to U.S.A. (Egypt) A/HRC/30/12/Add.1 – 176.310; *Police Violence Against Homeless, Poor Persons, Housing & Homelessness Addressed at Global Review of U.S. Human Rights Record*, HOMELESSNESS LAW (May 14, 2015), <http://homelessnesslaw.org/2015/05/police-violence-against-homeless-poor-persons-housing-homelessness-addressed-at-global-review-of-u-s-human-rights-record/>.

²⁵ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015), https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Document/s/A_HRC_30_12_Add_1_ENG.DOCX.

to societal problems largely related to poverty” and instead focus on solutions “that do not involve criminalization.”²⁶ Similarly, Cuba recommended that the U.S. “[e]nd the criminalization of poverty.”²⁷ For both of these recommendations, the U.S. affirmed that it “supports investing in direct solutions to alleviate the personal and social problems surrounding the issues of poverty.”²⁸

Other countries have further concluded that punishing homelessness constitutes CIDT. For instance, the United Kingdom Parliament expressed concern that preventing a local housing authority from allocating housing to certain groups of people experiencing homelessness violated the right to be free from CIDT under the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”).²⁹ Additionally, the African Court on Human

²⁶ Hum. Rts. Council, *Draft Report of the Working Group on the Universal Periodic Review*, United States of America, 26.255 U.N. Doc. A/HRC/WG.6/36/L.11 (2020).

²⁷ *Id.* at 26.284.

²⁸ Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review*, United States of America, ¶ 12 U.N. Doc. A/HRC/46/15/Add.1 (2021).

²⁹ THE JOINT COMMITTEE ON HUMAN RIGHTS, HOMELESSNESS BILL, 2001-4, HC First Report-2 (UK), <https://publications.parliament.uk/pa/jt200102/jtselect/jtrights/30/3003.htm#n8>. See European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, Art. 3, E.T.S. No. 5. [hereinafter European Convention].

and Peoples' Rights found that vagrancy laws, which "punish the poor and underprivileged, including ... the homeless,"³⁰ violate the African Charter on Human and Peoples' Rights' prohibition on "cruel, inhuman or degrading punishment and treatment."³¹

C. The U.S. has Itself Acknowledged Punishment of Homelessness as a Violation of Human Rights and CIDT.

The U.S. federal government has on multiple occasions acknowledged that punishing life-sustaining conduct violates human rights and is ineffective. In 2012, the U.S. Interagency Council on Homelessness ("USICH") issued a report noting that "individuals who are arrested or fined for 'act of living' crimes in public spaces now have a criminal record, resulting in barriers to work and difficulty in receiving mainstream services and housing that often bar individuals with criminal histories."³² The report continues, "[i]n addition to violating domestic law,

³⁰ Afr. Ct. H.P.R., *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa*, para. 70, No. 001/2018, Advisory Opinion of Dec. 4, 2020, http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018_-_PALU-Advisory_Opinion.pdf.

³¹ *Id.*

³² USICH, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 1* (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions>.

criminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”³³ The USICH, representing the expertise of 19 federal agencies, thus recognizes that these laws are not only cruel, but perpetuate a cycle of homelessness and constitute potential treaty violations.

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) have likewise acknowledged the cruel futility of laws punishing homelessness. In 2014, the DOJ filed a brief in *Bell v. Boise* (later *Martin v. Boise*) stating, “It should be uncontroversial that punishing conduct that is a universal and unavoidable consequence of being human violates the Eighth Amendment.”³⁴ In 2016, the DOJ later affirmed that its position in *Bell* was an “acknowledgement of the human rights of people experiencing homelessness.”³⁵ HUD’s website also states “criminalization policies further marginalize men and women who are experiencing homelessness, fuel inflammatory attitudes, and may even unduly restrict constitutionally protected liberties and violate our international

³³ *Id.* at 8.

³⁴ Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d. 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB).

³⁵ Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf>.

human rights obligations.”³⁶ HUD endorses USICH’s 2012 report, which emphasizes a “human rights approach to ending homelessness and points out that criminalization measures are not aligned with this approach.”³⁷ These prominent acknowledgements by the U.S. government that punishing homelessness violates basic rights, combined with universal condemnation from the international community, establish a clear standard this Court should use to inform its interpretation of the Eighth Amendment. Propping up laws punishing homelessness through fines and fees would entail a step backwards from “the evolving standards of decency that mark the progress of a maturing society.”³⁸

II. THE ROOT CAUSE OF THE CRIMINALIZATION AND PUNISHMENT OF HOMELESSNESS IS THE FAILURE TO RECOGNIZE THE RIGHT TO ADEQUATE HOUSING.

A. International and Regional Human Rights Law Recognize the Right to Adequate Housing.

Rights violations caused by the punishment of homelessness stem from the failure to recognize the right to adequate housing—a fundamental right under

³⁶ *Decriminalizing Homelessness*, HUD EXCH. (2014), <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/>.

³⁷ *SNAPS in Focus: The Case Against Laws that Criminalize Homelessness*, HUD EXCH. (Oct. 6, 2014), <https://www.hudexchange.info/news/snaps-in-focus-the-case-against-laws-that-criminalize-homelessness>.

³⁸ *Trop v. Dulles*, 356 U.S. 86, 100–01 (1958).

international and regional law. International instruments that provide for this right include the UDHR,³⁹ International Convention on the Elimination of Racial Discrimination (“ICERD”),⁴⁰ International Covenant on Economic, Social and Cultural Rights (“ICESCR”),⁴¹ and Convention on the Elimination of all Forms of Discrimination Against Women.⁴² As the UN Committee on Economic, Social and Cultural Rights (“CESCR”) has explained, the right to adequate housing is not merely a right to shelter, nor does it require that governments provide a house to every person free of charge.⁴³ Instead, it requires that governments take steps to ensure all people are able to house themselves with dignity.⁴⁴ This obligates

³⁹ UDHR, *supra* note 6 at art. 25(1).

⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii), *ratified* Oct. 21, 1994, 660 UNTS 195, 212 [hereinafter ICERD].

⁴¹ International Covenant on Economic, Social, and Cultural Rights art. 11, *signed* Oct. 05, 1977, 993 U.N.T.S. 3.

⁴² Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2)(h), *signed* July 17, 1980, 1249 U.N.T.S. 13.

⁴³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, ¶ 7, U.N. Doc. E/1992/23 (1991).

⁴⁴ *Id.*

protection against forced eviction and housing that is affordable, habitable, accessible, well-located, and culturally adequate.⁴⁵

The right to adequate housing is likewise recognized by each of the main regional human rights systems. The Organization of American States' Charter, which the U.S. has ratified, specifically urges Member States to dedicate every effort to achieving "[a]dequate housing for all sectors of the population."⁴⁶ Moreover, the African Commission on Human and Peoples' Rights espouses "the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity."⁴⁷ The revised European Social Charter calls upon states to "promote access to housing of an adequate standard" and "make the price of housing

⁴⁵ *Id.* at ¶ 8.

⁴⁶ Organization of American States (OAS), *Charter of the Organization of American States*, art. 35(k), April 30, 1948, available at: <https://www.refworld.org/docid/3ae6b3624.html>. See also Inter-American on Protecting the Human Rights of Older Persons, art. 24, Jan. 11, 2017.

⁴⁷ *Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, AFR. COMM'N H.P.R., para. 78 (Oct. 24, 2022), https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf. See also African Charter on Human and People's Rights, arts. 2, 3, 5, 6, 7, 12, and 18, *adopted* June 27, 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58 (1982); African Charter on the Rights and Welfare of the Child arts. 2, 4(1), and 17, 11 July 1990, CAB/LEG/24.9/49 (1990); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 24, *adopted* July 11, 2003.

accessible to those without adequate resources.”⁴⁸ Furthermore, in realizing the civil and political rights in the European Convention,⁴⁹ the European Court of Human Right has urged countries to take an expansive definition of “home” to prevent further inequality and homelessness.⁵⁰

B. Homelessness is a Prima Facie Violation of the Right to Adequate Housing, as well as a Violation of Civil and Political Rights.

Homelessness itself is a prima facie violation of the right to adequate housing. As CESCR explained, “a State party to [ICESCR] in which any significant number of individuals are deprived of basic shelter and housing is, prima facie, failing to discharge its obligations under the Covenant.”⁵¹ While the U.S. has not yet ratified ICESCR, as a signatory, it must not act in any way that violates the Covenant’s

⁴⁸ European Social Charter (Revised) art. 31, *opened for signature* May 3, 1996, E.T.S. No. 163.

⁴⁹ European Convention, *supra* note 29.

⁵⁰ Niemietz v. Germany, 1992-II Eur. Ct. H.R. 324; *See also* Arturs Kucs, Zande Sedlova, and Liene Pierhurovica, *The Right To Housing: International, European, and National Perspectives*, 64/65 CUADERNOS CONSTITUCIONALES DE LA CÁTEDRA FADRIQUE FURIÓ CERIOL 106 (year unknown).

⁵¹ Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 48, U.N. Doc. A/HRC/31/54 (2015) (citing CESCR, General Comment No. 3 (1990), ¶ 10).

object and purpose.⁵² Punishing homelessness violates this. As the Special Rapporteur on adequate housing noted, the “right to adequate housing is, at its core, the right to a place to live in dignity and security.”⁵³ Punishment heaped upon people already experiencing homelessness for engaging in life sustaining activities directly undermines their dignity and security.

Moreover, homelessness is not just a violation of the right to adequate housing, but also a violation of civil and political rights, espoused in treaties the U.S. has ratified.⁵⁴ In addition to violating the prohibition against CIDT, punishing homelessness violates the rights to life,⁵⁵ liberty and security of person,⁵⁶ freedom of movement,⁵⁷ and equality and non-discrimination.⁵⁸ As the Special Rapporteur

⁵² RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018)

⁵³ Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 11, U.N. Doc. A/HRC/34/51 (2017).

⁵⁴ Hum. Rts. Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, ¶ 4, U.N. Doc. A/HRC/31/54 (2015).

⁵⁵ ICCPR, *supra* note 7 at art. 6.

⁵⁶ ICCPR, *supra* note 7 at art. 9.

⁵⁷ ICCPR, *supra* note 7 at art. 12.

⁵⁸ ICCPR, *supra* note 7 at art. 4(1) and art. 26; ICERD, *supra* note 40 at art. 5.

on adequate housing explained, “homelessness is an extreme violation of the rights to adequate housing and non-discrimination and often also a violation of the rights to life, to security of person, to health, to protection of the home and family and to freedom from [CIDT].”⁵⁹

C. The Court in this Case Could Order Housing as a Remedy.

The City’s attack on the narrow relief sought and obtained in *Blake* lacks merit; in fact, it is well within the Court’s authority to go further and order housing (not just shelter) as a remedy for the plaintiffs. Courts have issued remedies aimed at solving the underlying issues of a violation, rather than simply compensating a party for its loss.⁶⁰ The Supreme Court found it appropriate for trial courts to use this power when: “(1)[T]hose courts have determined broader structural changes are necessary to cure an ongoing constitutional violation *and* (2) state and local authorities have demonstrated their longstanding unwillingness or inability to cure that violation.”⁶¹ In *Brown v. Plata*, the Supreme Court considered the validity of two Ninth Circuit District Court orders directing California to reduce overcrowding

⁵⁹ Hum. Rts. Council, *supra* note 54 at ¶ 4.

⁶⁰ Eric S. Tars et al., *Can I Get Some Remedy?: Criminalization of Homelessness and the Obligation to Provide an Effective Remedy*, 45 COLUMBIA HUMAN RIGHTS LAW REVIEW, 738, 750 (2014).

⁶¹ *Id.* at 751.

in its penal system to remedy prisons’ “unconstitutional medical and mental health care.”⁶² The Court reasoned, “The population reduction [is] of unprecedented sweep and extent. Yet, so too is the continuing injury and harm...California’s prisons [have] fallen short of minimum constitutional requirements...Over the whole course of years during which this litigation has been pending, no other remedies have been found to be sufficient.”⁶³

Similarly, homelessness in this case has persisted for years, as has its punishment, rather than efforts to address underlying causes.⁶⁴ In *Blake*, the court found that the plaintiffs’ constitutional rights were violated and suggested structural changes to respond to the “public health crisis” of uprooting people experiencing homelessness.⁶⁵ The Southern District of Florida likewise acknowledged, “Obviously, the ideal solution would be to provide housing and services to the

⁶² *Brown v. Plata*, 131 S. Ct. 1910, 1927 (2011).

⁶³ *Brown v. Plata*, 131 S.Ct. at 1923.

⁶⁴ This court’s docket has dealt extensively with those responses over the past few decades. *E.g. Los Angeles Alliance for Survival v. City of Los Angeles*, 224 F.3d 1076 (9th Cir. 2000), *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir.2006), *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014), *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) *cert. denied* 2019 U.S. LEXIS 7571 (Dec. 16, 2019).

⁶⁵ *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2020 WL 4209227, at *15 (D. Or. July 22, 2020).

homeless.”⁶⁶ The same solution applies here where Grants Pass, instead of taking action to address homelessness, has decided to punish those already suffering. This Court would be well within its power to not simply enjoin enforcement of the unconstitutional ordinances, but to require substantive remedies, preventing punishment for a lack of access to housing.

CONCLUSION

By excluding people experiencing homelessness from public spaces and subjecting them to fines and fees, Grants Pass has violated fundamental human rights. In defining “cruel and unusual punishment” under the Eighth Amendment, U.S. courts have relied on international human rights standards as a moral benchmark in line with “evolving standards of decency.” Similarly, this Court should apply the clear and consistent standard, articulated by numerous human rights bodies, that laws punishing homelessness constitute CIDT and thus violate the Eighth Amendment. Upholding the district court’s ruling in this case is a first step, but ultimately, addressing the underlying causes requires recognition of the right to adequate housing and affirmative measures to enable access to housing for people experiencing homelessness.

⁶⁶ *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1583 (S.D. Fla. 1992).

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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I hereby certify that on June 3, 2021, I filed Amici's Brief electronically using the appellate CM/ECF system and that all participants in this appeal are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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